IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.940 OF 1999

Smt.Indira Ramchandra Vartekar
aged 32 years, Occ.Service
(under suspension)
R/o. A/P.Kajurli, Taluka Guhagar
District Ratnagiri .. Petitioner.

Vs.

The Chief Executive Officer,
Ratnagiri Zilla Parishad,
Ratnagiri .. Respondent.

Mr.Sanjay Prabhu with Mr.N.V.Bandiwadekar for the petitioner.

Mr.P.P.Chawan for the respondent.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, J.

DATED : 20TH JANUARY, 2006.

ORAL JUDGMENT : (PER SMT.RANJANA DESAI, J.)

. The petitioner was working as a Nurse with Ratnagiri Zilla Parishad, Ratnagiri. On 23.1.1996 the respondent - The Chief Executive Officer, Ratnagiri Zilla Parishad, Ratnagiri, issued a charge-sheet to the petitioner for holding departmental enquiry against her in respect of certain alleged misconduct. The respondent issued an order on 13.1.1996 placing the petitioner under suspension in contemplation of departmental

enquiry. According to the petitioner, she challenged the order of suspension by filing complaint in the Labour Court, Kolhapur under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court stayed the order of suspension and the petitioner was reinstated in service.

2. By order dated 19.8.1996 the Labour Court vacated its order of stay. Thereafter the respondent issued order dated 27.11.1996 again placing the petitioner under suspension. According to the petitioner as per the said order she was paid subsistence allowance at 50% of the salary. The case of the petitioner is that as per Rule 68 of Maharashtra Civil Services (Joining Time, Foreign Services and payments during Suspension, Dismissal and Removal) Rules, 1981 ("the said Rules" for short) the respondent was required to pay to the petitioner subsistence allowance at revised rate after expiry of period of three months from the date of suspension i.e. w.e.f. 1.3.1997 but the respondent did not do so. The petitioner made representation on 23.4.1997 to the respondent requesting him to pay subsistence allowance at revised rate from 1.3.1997. The respondent did not

do so. The petitioner made similar representation on 30.4.1997 which was followed by representation dated 21.5.1997 in which the petitioner made a request that since the suspension was continued beyond the period of six months the suspension should be revoked and she should be reinstated in service.

3. On 23.5.1997, the respondent passed an order stating that the petitioner is placed under suspension; that departmental enquiry against her is in progress but the enquiry report is not yet received; that the petitioner is not responsible for delay in completion of departmental enquiry proceedings and therefore the sanction is granted to continue payment of subsistence allowance after the period of three months from date of suspension. The grievance of the petitioner is that in this letter the revised rate is not stated.

4. The respondent then issued an order dated 29.8.1997 stating that 10% increase shall be made in the amount of subsistence allowance and therefore the petitioner should be paid subsistence allowance at the rate of 60% of salary. It is the case of the petitioner that inspite of the said order subsistence allowance at revised rate was not

paid to the petitioner. The petitioner made several representations but they were not considered favourably. It is against the backdrop of these facts that the petitioner has approached this Court. Relying heavily on Rule 68 of the said rules the petitioner has prayed that:

> "(b) By a suitable writ, order or direction this Hon'ble Court be pleased to direct the Respondent to forthwith pay to Petitioner the subsistence allowance at the rate of 75% of salary w.e.f. 1.3.1997 during the continuation of suspension of Petitioner and the Respondent be further directed to pay to Petitioner the arrears of subsistence allowance as per said rate.
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> (c) By a suitable writ, order of direction this Hon'ble Court be pleased to direct the Respondent to forthwith pay to Petitioner the other compensatory allowances viz. House Rent Allowance, Uniform Allowance, Washing Allowance, Interim Reliefs, etc. as admissible under rules w.e.f. 1.12.1996 when Petitioner was placed under suspension and continue to pay the same till the Petitioner continues under suspension.
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> (d) By a suitable writ, order or direction this Hon'ble Court be pleased to direct the Respondent to forthwith pay to Petitioner the salary for the month of August 1996, the salary of medical leave for the period 5.1.1996 to 3.2.1996 and the amount of surrender leave for the period 5.2.1996 to 6.3.1996."

5. We have heard learned counsel for the petitioner and learned counsel for the respondent. The learned counsel for the petitioner has reiterated all the submissions made in the

petition. He has contended that his case is clearly covered by Rule 68 (1)(a) and 68 (1)(b). He submitted that therefore necessary directions be issued. The learned counsel for the respondent has taken us through affidavit of Shri Prasad Ramakant Patil, Junior Assistant of Zilla Parishad Ratnagiri in reply to the petition. He submitted that no case is made out for interference.

6. Rule 68 which is the basis of the petitioner's case reads thus:

Rule 68: Subsistence allowance and compensatory allowance during suspension:-

(1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payment namely:-

> (a) A subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half pay and, in addition dearness allowance based on such leave salary:
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> Provided that where the period of suspension exceeds three months the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first three months as follows:
>
> (i) It may be increased by a suitable amount, not exceeding fifty percent of the subsistence allowance admissible during the period of first three months if in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not

directly attributable to the Government servant;

(ii) It may be reduced by a suitable amount, not exceeding fifty percent of the subsistence allowance admissible during the period of the first three months if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant.

(iii) The rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub clause (i) and (ii) above.

(b) Other compensatory allowances, if any, of which the Government servant was in receipt of the date of suspension to such extent to such conditions as the authority suspending the Government servant may direct;

Provided that the Government servant shall not be entitled to the Compensatory allowance unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted."

7. A bare reading of Rule 68 indicates that increase or decrease in subsistence allowance as per Rule 68 (1)(a)(i)(ii) is at the discretion of the respondent. The respondent admits that suspension was not prolonged because of the petitioner. Considering this, in fact the respondent vide order dated 29.8.1997 has stated that the increase in the subsistence allowance shall be 10% and the petitioner shall be entitled to subsistence allowance at the rate of 60% of

salary from expiry of three months from the date of suspension. In the facts of this case there is no reason to come to the conclusion that discretion is improperly exercised. The increase is in terms of Rule 68(1)(a)(i) and we cannot find fault with it. No interference is necessary with that.

8. So far as the prayer for compensatory allowance is concerned, in our opinion, the same has been rightly rejected by the respondent as no case is made out as per Rule 68(1)(b). However, there is some substance in the contention of learned counsel for the petitioner that since the suspension order was stayed for some period by the Labour Court and it was later on vacated the petitioner will be entitled to the salary for the period for which she has worked till the stay order was vacated. The learned counsel for the respondent does not dispute this position. Hence we hold that the petitioner will be entitled to get salary for the period for which she has in fact worked with the respondent from the date the suspension was stayed by the Labour Court till the date the stay was vacated. The respondent shall pay salary to the petitioner for the said period if the petitioner has in fact worked during the said period. No other relief can be granted to the

petitioner. With the above observations the petition is disposed of.

(D.B.Bhosale, J.) **(Ranjana Desai, J.)**